

DEPARTMENT OF INDUSTRIAL RELATIONS

INITIAL STATEMENT OF REASONS FOR

PROPOSED ACTION TO ADOPT

CALIFORNIA CODE OF REGULATIONS, TITLE 8, CHAPTER 8, SUBCHAPTER 6,
SECTIONS 17200 through 17270.

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NOTICE OF PROPOSED ADOPTION OF REGULATIONS BY THE DIRECTOR OF
INDUSTRIAL RELATIONS TO ESTABLISH HEARING PROCEDURES FOR
APPEALS FROM PREVAILING WAGE DETERMINATIONS

INITIAL STATEMENT OF REASONS

The Director of the Department of Industrial Relations (“Director”) proposes to adopt regulations setting forth the procedures for hearing disputes on the payment of prevailing wages in public works contracts under Articles 1 and 2 of Division 2, Part 7, Chapter 1 (commencing with section 1720) of the Labor Code. The Director proposes to adopt these regulations as a new Subchapter 6 of Chapter 8, Division 1 (Sections 17200 – 17270) of Title 8 of the California Code of Regulations.

GENERAL INFORMATION

The laws regulating public works projects require among other things that contractors and subcontractors pay their employees not less than the general prevailing wage rates, as determined under the Labor Code. These laws are enforced through the issuance of civil wage and penalty assessments by the State Labor Commissioner and through the withholding of contract payments by the bodies who award public works contracts.

Labor Code section 1742, adopted by Stats. 2000, Chapter 954, §10, and effective on July 1, 2001, gives affected contractors and subcontractors the right to appeal a Civil Wage and Penalty Assessment or a Notice of Withholding of Contract Payments by requesting review by the Director of the Department of Industrial Relations. The statute provides that within specified time limits, a Hearing Officer appointed by the Director will conduct an administrative hearing and then recommend a proposed decision for adoption by the Director. The Director’s decision then will be subject to court review only by writ of administrative mandate under Code of Civil Procedure section 1094.5, using the “substantial evidence” test. This will be the exclusive method of appeal by an affected contractor or subcontractor from such an assessment or notice (although §1 of Stats. 2000, Chapter 954 states that it does not preclude other enforcement remedies). This new system for appeals replaces the former system in which contractors could seek review directly in court or in some instances by requesting a hearing with the Director.

The last sentence of Labor Code section 1742(b) requires the Director to adopt regulations setting forth procedures for these hearings. The purpose of this rulemaking is to carry out that mandate and set forth appropriate procedures that give effect to specific statutory requirements and afford due process to the parties involved in these proceedings.

Stat. 2000, Chapter 954 (also known as AB 1686) made other changes in the prevailing wage laws which are necessarily reflected in these proposed rules. These proposals have also been drafted to incorporate appeals from penalty assessments for certified payroll violations

issued by either the Labor Commissioner or the Division of Apprenticeship Standards under Labor Code section 1776.

Through these proposals, the Director intends to provide a complete set of rules governing prevailing wage appeals, from issuance of the Assessment or Notice of Withholding through the preparation of a record following the Final Decision of the Director. Some repetition of statutory language was necessary to make these rules the most coherent and accessible guide for parties who become involved in these cases. The Director anticipates that some participants in these cases will be non-lawyers who will find it easier to follow regulations that set out the procedures completely rather than having to go back and forth between the statute and rules.

Consideration was given to the alternatives of either incorporating these hearings into one of the Department's preexisting administrative hearing systems or just adopting the hearing rules of the Administrative Procedure Act (found at Government Code section 11500 and following) for these proceedings. However, in light of Labor Code 1742's peculiar requirements, particularly the short time limits for commencing the hearing (90 days after receipt of a request for review) and making a decision (45 days after the hearing), neither alternative seemed feasible.

PROPOSED REGULATIONS

The Director proposes to adopt sections 17201 through 17212, 17220 through 17229, 17230 through 17237, 17240 through 17253, 17260 through 17263, and 17270, as set forth below. The following statements apply to all of the proposed regulations unless otherwise indicated.

- The Director did not rely upon technical, theoretical, or empirical studies, reports, or similar documents in making these proposals. The Department did consult legal authorities (case law, statutes, regulations, and legislative and regulatory histories) to identify suggested language, formats, and procedures, and to make sure that these proposals meet applicable legal standards. Citations to legal authorities that were consulted or construed are found in Reference notes and comments following the text of each proposed regulation as well as in the Notice of Proposed Rulemaking.
- Except as noted in the General Information above or as specified under an individual proposal below, no reasonable alternatives were identified by the Director nor have any reasonable alternatives been identified and brought to the attention of the Director at the time these regulations were proposed. The alternatives considered were in the nature of different regulatory schemes or for different language or standards for particular regulations. Because Labor Code section 1742(b) *requires* the Director to adopt regulations setting forth hearing procedures, alternatives to adopting regulations were not considered.
- None of the proposals mandates the use of specific technologies or equipment.

- These proposals impact only those parties who choose to participate in public works projects, and the Director believes that these proposals impose no significant mandates, costs, or savings that are different or distinct from what the Legislature has required by statute. The administrative hearing system created by the statute and these proposed regulations will likely result either in no greater cost or in some savings for the parties compared to the old system requiring direct court review.

The purpose of *section 17201 [Rule 01]* is to set forth the scope and application of the entire body of proposed regulations. The reason and necessity for this rule is to show what types of appeals are governed by these rules and what sorts of related proceedings are *not* governed by these rules. Subpart (c) clarifies that these rules do not preclude other authorized remedies for prevailing wage violations, repeating language from section 1 of AB 1686 that was not placed in the Labor Code.

The purpose of *section 17202 [Rule 02]* is to provide definitions of the following terms *as those terms are used in these proposed hearing regulations*.

“Affected contractor or subcontractor;” “Assessment;” “Awarding body;” “Department;” “Director;” “Enforcing Agency;” “Hearing Officer;” “Labor Commissioner;” “Party;” “Person;” “Representative;” “Surety;” and “Working Day.”

The reason and necessity for these definitions is twofold: (1) to provide shorthand terms in place of cumbersome statutory language, similar to how certain defined terms are used in Court Form Interrogatories; and (2) to provide specific meanings for words or terms that might have multiple statutory or common usage meanings derived from other sources. It is *not* the intent of this regulation to redefine or provide additional substantive meaning to any statutory definition.

The purpose of *section 17203 [Rule 03]* is to provide rules for computing deadlines, including applicable extensions of time to respond or act when documents are served by mail. The reason and necessity for the rule is that time computation issues come up repeatedly in short deadline procedures such as this one; and it is easier and more convenient for parties, especially non-lawyers, to explain when and how such rules apply rather than to require reference to a separate body of law under the Code of Civil Procedure.

The purpose of *section 17204 [Rule 04]* is to explain how Hearing Officers will be appointed, from what staff they will be obtained, what the minimum qualifications for appointment are (by reference to Government Code section 11502(b)), and what will preclude service in a given case (by reference to Government Code section 11425.30). The purpose of subpart (d) is to delegate the Director’s complete authority to appoint Hearing Officers to the Chief Counsel of the Office of the Director of Industrial Relations. The reason and necessity for the rule is to inform the parties how Hearing Officers will be selected and to allow for informed challenges should anyone question the propriety of a given appointment. The reason and necessity for subpart (d) to relieve the Director from the ministerial duty of signing off on appointments made by the Chief Counsel from the Chief Counsel’s own staff. The Chief Counsel in effect will exercise the administrative duties of a presiding judge.

The purpose of *section 17205 [Rule 05]* is to set forth the general authority of Hearing Officers as well as to limit the Director's involvement to making or reconsidering a final decision. The reason and necessity for this rule is to inform parties of the scope of the Hearing Officer's authority as well as when and how matters will be presented to the Director. The alternative of giving the Director more supervisory authority during the course of the proceeding was rejected as being incompatible with the statutory time limits, the Director's other responsibilities, and the further amendment to Labor Code section 1742, effective in 2005, which will remove the Director completely from these proceedings.

The purpose of *section 17206 [Rule 06]* is to specify that hearing case records are public records. The reason and necessity for this rule is to avoid any dispute over the public's right of access to such records.

The purpose of *section 17207 (Rule 07)* is to set forth rules governing ex parte communications between parties and the Hearing Officer or the Director. The rule specifies what kinds of ex parte communications are or are not permissible and what procedures govern situations of uncertain effect or when an improper communication is received. The purpose of subpart (g) of this section is to set forth interpretive guidelines for ex parte communications with the Director. The reason and necessity for this rule is that the Administrative Adjudication Bill of Rights (Government Code sections 11425.10 and following) requires these kinds of hearing procedures to incorporate such standards, and this rule answers likely questions about what is or is not a proper communication and how certain situations will be handled. The reason and necessity for subpart (g) is to answer inevitable questions regarding how discussions of prevailing wage issues by the Director and the Labor Commissioner or by the Director and representatives of contractors or affected labor unions will be treated. The alternative of trying to completely insulate the Director from any related policy issue discussion during the entire pendency of any case appears to be neither feasible, nor required by law, nor compatible with the Director's role as a cabinet level officer.

The purpose of *section 17208 [Rule 08]* is to clarify the Labor Commissioner's right to intervene in a case enforced by the awarding body and to specify how other non-parties may intervene or participate in a proceeding. Two options are provided in the Notice of Proposed Rulemaking. One would permit only bonding companies and sureties to intervene as parties and allow for only very limited participation by others, and the other option would give the Hearing Officer greater discretion to decide how other interest persons may intervene. The reason and necessity for this rule is that the statute provides only an incomplete expression of how persons with some interest in a proceeding may obtain notice or assert their interest. (Such interested persons might include a non-appealing contractor, a bonding company or surety, or the affected employees or their union.) The Administrative Procedure Act permits but does not require an intervention rule, and it was the inability of subcontractors to appeal the withholding of payments under the old scheme that in part led to the statutory requirement for these hearing procedures. *See Lujan v. G & G Fire Sprinklers, Inc.*, 121 S.Ct. 1446 (2001) and see Comments to final Assembly Floor Analysis for AB 1646 (Calif. Legislature 1999-2000 Session). This proposal would permit bonding companies and sureties to intervene, consistent with their statutory right to notice, but would permit others to intervene or participate only as authorized by the Hearing Officer. The reason for the more limited approach found in Option A is to avoid

expanding intervention rights in a way that would impede the ability to conduct hearings within the allotted time. It is also proposed in recognition that other interested parties may have alternative remedies (*see* statement concerning *section 17201 [Rule 01]* above). The Director invites suggestions or comments on these options or other possible approaches.

The purpose of *section 17209 [Rule 09]* is to specify the right of a party to appear through an authorized representative who may be a non-lawyer, to clarify the role of the representative consistent in terms of receiving notices and controlling the party's case, and to set forth the duty of parties and representatives to keep all others informed of their current address and telephone number. The reason and necessity for this rule is to clarify that a party may be represented by a non-lawyer and that notices must go through the authorized representative.

The purpose of *section 17210 [Rule 10]* is to sets forth rules for serving documents and providing a Proof of Service. The reason and necessity for the rule is that questions and issues related to the proper service of documents arise frequently, and are difficult for non-lawyers. This rule is simpler and more accessible than the alternative of requiring parties in all cases to refer to applicable sections of the Code of Civil Procedure.

The purpose of *section 17211 [Rule 11]* is to give the Hearing Officer discretion to authorize fax or e-mail service and filing in individual cases. The reason and necessity for the rule is to permit and encourage the use of such technology but not allow for their blanket use at this time. The Director recognizes that not everyone has access to the latest technology and that superior resources and technology can be used in ways that unduly burden or even abuse opposing parties. The Department also still needs to determine what systems and resources it will need to receive and manage case filings by fax or e-mail.

The purpose of *section 17212 [Rule 12]* is to indicate that required provisions of the Administrative Adjudication Bill of Rights apply to these proceedings and that the formal hearing rules of the Administrative Procedure Act do not apply. The reason and necessity for the rule is to assist parties in identifying how Administrative Procedure Act rules interrelate with these provisions. With regard to the APA's formal hearing rules, Government Code section 11425.10(a)(2) requires that parties be notified whether or not those rules are applicable.

The purpose of *section 17220 [Rule 20]* is to state the requirements for the contents and service of the Civil Wage and Penalty Assessment or Notice of Withholding of Contract Payments. The reason and necessity for this rule is to put this information in one place without need for reference back to the statute and to clarify what information must be included so that an affected contractor or subcontractor is provided clear notice of what claims are at issue, where a Request for Review must be sent, and what the consequences are for not filing a timely Request for Review.

The purpose of *section 17221 [Rule 21]* is to set forth the right and requirements for an early settlement meeting between the affected contractor or subcontractor and the Enforcing Agency. The purpose of subpart (c) is to clarify that the statutory right to an early settlement meeting does not preclude later settlement talks. The purpose of subpart (d) is to clarify that the deadline for filing a Request for Review is not extended by the process of requesting or

conducting an early settlement meeting nor by the failure of the Enforcing Agency to make this opportunity available. The reason and necessity for this rule is to expand upon and clarify rights and requirements set forth in Labor Code section 1742.1(b) and to clarify that this process neither limits nor expands other procedural rights or duties.

The purpose of *section 17222 [Rule 22]* is to specify that a Request for Review may be deemed filed on the date of mailing and to clarify where to send and what information to provide in the Request for Review, which is the appeal document in these proceedings. The reason and necessity for this rule is to establish a date of filing for purposes of resolving timeliness questions and to specify that the Request must be served on the Enforcing Agency, as opposed to the Director or some other Division within the Department. The requirements as to the contents of the Request are needed to facilitate the Hearing Officer's ability to schedule a hearing of appropriate length within the time limits provided by the statute.

The purpose of *section 17223 [Rule 23]* is to establish a deadline and requirements for the Enforcing Agency to transmit an appeal file to the Office of the Director. The reason and necessity for this rule is to provide a link between the filing of the Request for Review with an Enforcing Agency and the transfer of the case to the Office of the Director, which then must schedule and conduct a hearing. Any significant delay in this transmittal would compromise the statutory right to a prompt hearing.

The purpose of *section 17224 [Rule 24]* is to expand upon the Enforcing Agency's statutory duty to disclose the evidence it intends to use at the hearing including by (1) providing a safe harbor for compliance [subpart (b)]; (2) specifying how witness information must be disclosed [subpart (c)]; setting forth an exclusionary rule [subpart (d)]; and providing limited exceptions to that exclusionary rule [subpart (e)]. The reason and necessity for this rule is to resolve questions and areas of dispute that are likely to arise with respect to an Enforcing Agency's compliance with the statutory deadline for disclosing evidence.

The purpose of *section 17225 [Rule 25]* is to permit an affected contractor or subcontractor to withdraw a Request for Review and to provide procedures and time limits for seeking to reinstate a withdrawn Request. The reason and necessity for this rule is to address specifically the latter circumstance of a party wishing to reinstate a withdrawn request and to establish standards and limits for making that request.

The purpose of *section 17226 [Rule 26]* is to address the dismissal or amendment of a Civil Wage and Penalty Assessment or Notice of Withholding of Contract Payments by the Enforcing Agency. The proposal provides that a dismissal or amendment that reduces the sums at stake will usually be granted on notice; the purpose of the notice is to provide a "cooling off period" in which the Enforcing Agency may change its mind or another party may show that its rights will be compromised by the dismissal or amendment. To amend the claims upward, the Enforcing Agency must establish "good cause" based upon new information; the purpose of this standard is to permit amendments when warranted but not allow them as a means to circumvent statutory rights. The reason and necessity for this rule is to address another inevitable procedural issue by recognizing and limiting the Enforcing Agency's otherwise implied authority to dismiss or amend an Assessment or Notice of Withholding.

The purpose of *section 17227 [Rule 27]* is to provide an early dismissal procedure where it appears on the face of an Assessment or a Request for Review that one or the other may not have been served or filed within the statutory time limits. The reason and necessity for the rule is to avoid the time and cost required for a hearing on the merits of a Request for Review where it appears obvious that the Director lacks jurisdiction to hear the case because either the Assessment or the Request for Review was untimely.

The purpose of *section 17228 [Rule 28]* is to clarify that a Civil Wage and Penalty Assessment or Notice of Withholding of Contract Payments that has not been appealed is a “final order” within the meaning of the statute. The purpose of subpart (b) is to set forth the continuing duty of awarding bodies to withhold contract payments when an appeal remains pending as to at least one affected contractor or subcontractor. The reason and necessity for the rule is because certain enforcement rights attach to a final order, and the statute implies but does expressly state that a “final order” includes an Assessment or Notice that has not been appealed. Subpart (b) is needed to avoid premature dispersal of withheld contract payments when an Assessment or Notice has become final as to at least one but not every affected contractor or subcontractor.

The purpose of *section 17229 [Rule 29]* is to acknowledge the Labor Commissioner’s authority to recover prevailing wages, damages, and penalties that are due under the statute but that also exceed the amounts available to be withheld from contract payments due the affected contractor or subcontractor. The reason and necessity for the rule is to clarify that enforcement authority over such excess amounts rests with the Labor Commissioner, so that other parties are not misled.

The purpose of *section 17230 [Rule 30]* is to set standards for the scheduling of hearings and for the granting of continuances. Two options are provided in the Notice of Proposed Rulemaking: one for a strict policy against continuances once a hearing date is set and the other for a less strict policy when all parties join in the request. The reason and necessity for this rule is to set standards for enforcement of the statute’s 90 day deadline for starting the hearing that can be applied against inevitable requests for postponements. The tolling rule set forth in the final subpart is also needed to address circumstances beyond the Hearing Officer’s control that per force will prevent the Hearing Officer from starting the hearing within the statutory deadline.

The purpose of *section 17231 [Rule 31]* is to provide for an optional prehearing conference procedure, including two non-regulatory draft orders. The reason and necessity for this rule is to provide a standard mechanism for discussion and resolution of prehearing issues in order to facilitate the scheduling of the hearing on the merits and minimize any potential need to delay the hearing on the merits.

The purpose of *section 17232 [Rule 32]* is to permit multiple cases involving the same parties or issues to be consolidated and to permit consolidated matters to be severed. The reason and necessity for a consolidation rule is to conserve resources by permitting like matters to be considered together. Where significant issues of broad impact are involved, consolidation also brings the viewpoints of more parties along with a greater understanding of potential impacts to the table.

The purpose of *section 17233 [Rule 33]* is to set forth standards governing prehearing motions. The purpose of subpart (c) is to specify that such motions will usually be determined on paper, and the purpose of subpart (d) is to discourage prehearing motions going to the merits of the case. The reason and necessity for this rule is to set standards and limitations that allow for prehearing motions without impeding with the ability to proceed to the hearing on the merits.

The purpose of *section 17234 [Rule 34]* is to provide a procedure for the introduction of written testimony in lieu of having every witness testify in person. The reason and necessity for this rule is to provide for less costly and less time-consuming presentation of evidence, and to specify who bears the burden of producing the witness if another party requests the opportunity to cross-examine.

The purpose of *section 17235 [Rule 35]* is to authorize the issuance of subpoenas and subpoenas duces tecum. The reason and necessity for the rule is to provide a customary means through which a party to an administrative adjudication may exercise its due process right to confront witnesses.

The purpose of *section 17236 [Rule 36]* is to authorize the use of a Notice to Appear in lieu of a subpoena to compel the attendance of another party. The reason and necessity for the rule is to provide a legally recognized less costly alternative for compelling the attendance of party witnesses.

The purpose of *section 17237 [Rule 37]* is to limit circumstances under which parties will be permitted to conduct depositions and to preclude other forms of civil discovery. The reason and necessity for the rule is that the statute contemplates that most relevant evidence will have been investigated and disclosed either before or within 20 days after the Request for Review is filed. This appears to be the only discovery contemplated by the statute, and a rule that would permit other investigative discovery appears to be incompatible with the statutory 90 day deadline for starting the hearing.

The purpose of *section 17240 [Rule 40]* is to specify how parties will be notified of the appointment of a Hearing Officer and what procedures apply if a party objects to the person appointed. The reason and necessity for this rule is to provide a mechanism through which parties may enforce the standards governing who may serve as a Hearing Officer.

The purpose of *section 17241 [Rule 41]* is to state where hearings will be scheduled, how that location can be changed, and what constitutes a suitable location. The reason and necessity for this rule is to give parties notice of where their hearings will be scheduled as well an opportunity to identify and have the hearing moved to a more convenient location.

The purpose of *section 17242 [Rule 42]* is to set forth customary legal standards for the holding of an open adjudicative hearing by a Hearing Officer. The reason and necessity for this rule is to specify that these proceedings will be governed by these customary legal standards.

The purpose of *section 17243 [Rule 43]* is to set forth due process and other customary legal standards for the general conduct of an adjudicative hearing by a Hearing Officer. The reason and necessity for this rule is to specify that these proceedings will be governed by these customary legal standards.

The purpose of *section 17244 [Rule 44]* is to set forth how the rules of evidence and particularly how the hearsay rule will be applied in these proceedings. The reason and necessity for this rule is to specify that these proceedings will be governed by the customary legal standards concerning the admissibility of evidence in administrative hearings.

The purpose of *section 17245 [Rule 45]* is to authorize the Hearing Officer to take official notice (similar to judicial notice) of certain facts and information, including technical facts within the special expertise of the Department. The reason and necessity for this rule is to specify that these proceedings will include this conventional method for obtaining evidence.

The purpose of *section 17246 [Rule 46]* is to set forth the Hearing Officer's authority in the event of a party's failure to appear as well as the procedures through which a party may seek relief from the consequences of its failure to appear. The reason and necessity for this rule is to have an objective standard for handling party defaults that likely will occur from time to time.

The purpose of *section 17247 [Rule 47]* is to forth the authority and procedures through which the Hearing Officer may certify a person for being in contempt or sanction a party for bad faith or frivolous tactics. The reason and necessity for this rule is to provide the Hearing Officer with the necessary means to control the proceedings and enforce the rules governing these proceedings.

The purpose of *section 17248 [Rule 48]* is to set forth standards and procedures for obtaining the services of an interpreter. The reason and necessity for this rule is that it is required by the Administrative Procedure Act and protects the rights and abilities of parties and witnesses who speak other languages, or who are hearing impaired, to both understand the proceedings and be understood.

The purpose of *section 17249 [Rule 49]* is to establish the Hearing Officer's control over the maintenance of the hearing record and to provide that hearings will be tape recorded unless a party requests and procures a court reporter or other means for recording the proceedings. The reason and necessity to provide parties with notice how the proceedings will be recorded as well as an opportunity to request and provide an alternative means for recording the proceedings.

The purpose of *section 17250 [Rule 50]* is to set forth the parties' respective burdens of coming forward with evidence and burdens of proof in a hearing. The reason and necessity for this rule is to recognize and clarify the differing burdens imposed by the statute for particular findings and determinations.

The purpose of *section 17251 [Rule 51]* is to provide a separate rule explaining requirements related to liquidated damages. Subpart (a) sets forth the burdens of coming forward with evidence and of proof, and subpart (b) provides a standard governing the showing

required to obtain a waiver of liquidated damages. The reason and necessity for this rule is to clarify the burdens and to have an objective measure of the grounds entitling a contractor or subcontractor to have liquidated damages waived, rather than allowing for subjective and potentially inconsistent case by case determinations. The Labor Commissioner's standard for waiving penalty wages under Labor Code section 203 (found at 8 Cal.Code Reg. section 13520) was considered as an alternative standard, but the Fair Labor Standards Act standard (29 U.S.C. sections 216 and 260 as construed judicially) appears to be more certain and more consistent with the statutory language.

The purpose of *section 17252 [Rule 52]* is to specify how parties may present written and oral arguments. The reason and purpose for this rule is to acknowledge a customary due process right but allow for specific and customary controls and procedures that will assist the Hearing Officer in preparing a correct and prompt recommended decision.

The purpose of *section 17253 [Rule 53]* is to specify when the hearing is deemed concluded, particularly when additional filings are authorized after the end of taking testimony. The necessity and reason for the rule is to establish when the Director's statutory 45 day deadline for issuing a decision starts to run.

The purpose of *section 17260 [Rule 60]* is to set forth the statutory requirements for the contents and service of the Decision of the Director. The reason and necessity for this rule is to provide this information alongside the other rules for easy reference. Subpart (b) also harmonizes the statute and other rules by requiring that the Decision of the Director be served directly on a represented party as well as on that party's authorized representative.

The purpose of *section 17261 [Rule 61]* is to highlight and clarify the very limited time frame allowed by statute for the Director to reconsider a Decision. The purpose of subpart (d) is to specify that an application for Reconsideration is neither a prerequisite for seeking court review nor does it extend the time limit for seeking court review. The reason and necessity for this rule is to clarify the very limited scope of the Director reconsideration authority under Labor Code section 1742(b). The statutory language does not appear to allow for alternatives that would give the parties a greater opportunity to seek reconsideration or provide the Director with more time and flexibility to reconsider a Decision.

The purpose of *section 17262 [Rule 62]* is to specify what constitutes the Director's final decision for purposes of seeking court review and to further specify that the deadline for seeking court review runs from the date of service of the Decision, *including* any applicable extension of time for service by mail. The reason and necessity for this rule is to clarify how to determine the deadline for seeking court review. The inclusion of an extension of time for service by mail is consistent with the statutory language requiring mail service of the Decision of the Director in accordance with Code of Civil Procedure section 1013.

The purpose of *section 17263 [Rule 63]* is to set forth and clarify the obligation of a party seeking court review to designate and pay for preparation of the hearing record. The reason and purpose for this rule is to incorporate and advise parties of a customary legal standard for having a record prepared for purposes of judicial review.

The purpose of *section 17270 [Rule 70]* is to provide a transitional rule for cases in which contract payments were withheld prior to July 1, 2001, but the affected contractor or subcontractor still has time remaining to appeal the action after that date. The reason and necessity for this rule is that the statutes governing appeal rights prior to July 1, 2001 (Labor Code sections 1731 – 1733 and 1771.7) will be repealed and replaced as of that date by new Labor Code section 1742 and revised Labor Code section 1771.6. This proposal clarifies that affected parties may exercise their right of appeal under the new procedure during any time that still remained for seeking review under the old statute, but that the overall limit of 90 days for seeking review under the old statutes will not be changed or extended for transitional cases.